IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal No.1125 of 1997
In
Writ Petition No.627 of 1996

Shri Umashankar Jaswal,
C/o.Mumbai Kamgar Sabha,
D-15, Ganesh Prasad,
Naushir Barucha Marg, Tardeo,
Mumbai - 400 007. .. Appellant (Org.Petitioners)

Versus

M/s.Royal Auto Centre,
365-A, V.P. Road,
Saidham Wadi,
Mumbai 400 004. .. Respondent (Org.Respondent)

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Shri Rajesh Gehani for the Appellant.

S/Shri Shamrao S. Patil with A.S.Patil for the Respondent.

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CORAM : R.M.S.KHANDEPARKAR &
DR.D.Y.CHANDRACHUD, JJ

DATED : 17TH JANUARY, 2007

ORAL JUDGMENT: (Per DR.D.Y.CHANDRACHUD, J)

1. A reference to adjudication under Section 10 of the Industrial Disputes Act, 1947 was rejected by the Labour Court on the ground that the Undertaking, wherein the appellant was employed, was not an

"industry" within the meaning of Section 2(j) of the Act. The order of the Labour Court has been confirmed by the learned Single Judge in a Petition under Article 227 of the Constitution. The workman is before this Court in appeal.

2. The respondent-employer had a proprietory concern by the name of "Royal Auto Centre". The business of the firm consisted of purchasing automobile spare parts in Mumbai and supplying them to parties outside the State of Maharashtra. The workman was engaged in April, 1987 for carrying out the work of packing of spare parts and his services were dispensed with on 12th March, 1991. From the evidence on record, it emerges that besides the workman, the employer engaged one other person who was described as a Trainee. The business of the respondent was carried out from the premises of a shop.

3. The Labour Court applied the test laid down by the Supreme Court in **Bangalore Water Supply and Sewerage Board v. A. Rajappa & Ors.,** reported in AIR 1978 SC 548 and came to the conclusion that the establishment of the respondent was not an "industry" within the meaning of Section 2(j). The Labour Court held that the establishment had only two employees,

one of whom is a trainee and there was no organised labour force for distribution of goods or rendering any services in the establishment of the employer. The work of packing, the Labour Court held, could well be done by the employer himself and there was no organised activity or co-operation between employer and employee. The learned Single Judge in his judgment dated 21st August, 1997 affirmed the view of the Labour Court and held that it cannot be said that any organised labour was engaged in the establishment of the employer nor could it be said that there was a plurality of workmen engaged in the establishment of the employer. A small "upmarketing business activity" carried on by the employer could not be termed as a systematic activity organised by co-operation between employer and employee for distribution of goods or services.

4. On behalf of the workman, an attempt has been made to demonstrate from the evidence that besides the respondent-employer, the same premises were being used for carrying on business by the son of the proprietory. Hence, it was submitted that in the present case, a commercial activity was being carried on in the premises. Reliance was sought to be placed on a judgment of the Delhi High Court in **Om Prakash**

Jhumman Lal v. Labour Court, Tis Hazari, Delhi, & Anr., reported in 1970 I LLJ 143. Finally, it was submitted that the establishment of the respondent would not fall within the exception carved out by the Supreme Court in paragraphs 111 and 161 of the judgment in **Bangalore Water Supply's case (supra)**.

5. Before the judgment of the Supreme Court in **Bangalore Water Supply's case (supra),** a Division Bench of this Court in **Firm Tulsiram Sadanand Sarda v. Assistant Collector of Labour, Nagpur,** reported in 1960 Vol.43 BLR 342, had occasion to consider a case where a workman was engaged in a shop belonging to the employer. The shop was situated in the residential premises in which a partnership firm was carrying on the business of purchase and sale of bales of cotton and yarn. The Court had to construe the expression "industry" as defined under Section 2(14) of the C.P. and Berar Industrial Disputes Settlement Act, 1947. The Division Bench held that in order to constitute an "industry", the establishment should be engaged in an activity which is predominantly carried on by employment of organised labour force for the production or distribution of goods or for rendering of material services to the community at large or a part of such community. An activity pertaining to or

in relation to private and personal employment, it was held therein, would have to be excluded from the definition of industry. The employment of the workman in that case was of the nature of a private and personal employment in a shop for doing miscellaneous odd jobs. The Court held that the establishment was not an "industry" within the meaning of the said Act.

6. In **Bangalore Water Supply's case (supra)**, the Supreme Court laid down a three-fold test for determining whether an Undertaking is an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The ingredients necessary are (i) systematic activity, (ii) organized by co-operation between employer and employee, and (iii) production and/or distribution of goods and services calculated to satisfy human wants and desires. The test that was laid down by the Supreme Court was functional in nature emphasizing the aspect of employer-employee relations. In paragraph 111 of the judgment, however, the Supreme Court carved out an exception. The Court noted that the very image of the expression "industry" denotes a plurality of workmen and not a case where an isolated employment is provided to a workman or assistant. The Court observed as follows:-

"111. The result of this discussion is that the solicitors' case (AIR 1962) SC 1080) is wrongly decided and must, therefore, be overruled. We must hasten, however, to repeat that a small category, perhaps large in numbers in the muffasil, may not squarely fall within the definition of industry. A single lawyer, a rural medical practitioner or urban doctor with a little assistant and/or menial servant may ply a profession but may not be said to run an industry. That is not because the employee does not make a contribution nor because the profession is too high to be classified as a trade or industry with its commercial connotations but because there is nothing like organised labour in such employment. The image of industry or even quasi-industry is one of a plurality of workmen, not an isolated or single little assistant or attendant. The latter category is more or less like personal avocation for livelihood taking some paid or part-time from another. The whole purpose of the Industrial Disputes Act is to focus on resolution of industrial disputes and regulation of industrial relations and not to meddle with

> every little carpenter in a village or blacksmith in a town who sits with his son or assistant to work for the customers who trek in. The ordinary spectacle of a cobbler and his assistant or a cycle repairer with a helper, we come across in the pavements of cities and towns, repels the idea of industry and industrial dispute. For this reason, which applies all along the line, to small professions, petty handicraftsmen, domestic servants and the like, the solicitor or doctor or rural engineer, even like the butcher, the baker and the candle-stick maker, with an assistant or without, does not fall within the definition of industry. In regular industries, of course, even a few employees are enough to bring them within S. 2(f). Otherwise automated industries will slip through the net."

7. Applying the test which was laid down by the Supreme Court, it cannot be said that the Labour Court or the learned Single Judge was in error in holding that the establishment of the respondent-employer did not fulfil the ingredients necessary for an "industry" within the meaning of Section 2(j) of the Act. The

facts on record show that there were only two employees viz. the appellant and one person who was engaged as a trainee. The nature of the business consisted of a small shop dealing with automobile spare parts. The material on record has not established the existence of an organised or systematic activity comprised of co-operation between the employer and employee on a scale necessary to fulfil the definition of the expression "industry". The activity of the respondent-employer was essentially a family run business and in which, one or at the most two employees, were engaged for doing work of a marginal nature. The fact that the proprietor's son shared a table space does not alter the position. There was nothing like organised labour. The judgment of the Delhi High Court in **Om Prakash Jhumman Lal's case (supra)** was rendered before the decision in **Bangalore Water Supply (supra)**, and therefore, has not considered the exception, which was carved out, by the Supreme Court.

8. In these circumstances, we find no reason to interfere in the impugned order in the exercise of the appellate jurisdiction. Both, the Labour Court and the Learned Single Judge of this Court, have taken a view on sustainable grounds, on the evidence on record

and having regard to the test laid down by the Supreme Court. The Appeal is dismissed. No order as to costs.

(R.M.S.KHANDEPARKAR, J)

(DR.D.Y.CHANDRACHUD, J)